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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/621,178	07/16/2003	Douglas S. Horne	8603.63	2354
21999	7590	10/19/2006		EXAMINER
KIRTON AND MCCONKIE 60 EAST SOUTH TEMPLE, SUITE 1800 SALT LAKE CITY, UT 84111				ROGERS, KRISTIN D
			ART UNIT	PAPER NUMBER
			3736	

DATE MAILED: 10/19/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/621,178	HORNE ET AL.	
	Examiner	Art Unit	
	Kristin D. Rogers	3736	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on August 1, 2006.
- 2a) This action is FINAL. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) _____ is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) _____ is/are rejected.
- 7) Claim(s) _____ is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) Notice of Informal Patent Application
- 6) Other: _____

DETAILED ACTION

Claim Rejections - 35 USC § 102

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

1. Claims 1,6, and 15 are rejected under 35 U.S.C. 102(b) as being anticipated by Lum et al. (6391005). In regard to claims 1 and 15, Lum et al. shows a method of obtaining an electrical signal from a patient including locating a probe 150 for measuring an electrical signal of a patient's skin (column 3, lines 35-45 and column 5, lines 36-51), contacting with stationary element isolation hood of probe 180 the patient's skin, actuating motor 158 and feedback loop 104, which senses the pressure applied by the probe tip, applying pressure to the tip of probe 150 independent from pressure of the stationary hood 180 and measuring the electrical attribute of the meridian in the form of an impedance (Figure 1 and 7b). In regard to claim 6, Lum et al. shows a method of stabilizing a probe against the dermal area, measuring an electrical signal value and comparing the signal value to the pressure applied and changing the future amount of pressure when a different previous electrical signal value varies from the present electrical signal value (column 6 line 50 to column 7 line 5. Claims 19-20 teach the claimed method).

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

4. Claim 2 is rejected under 35 U.S.C. 103(a) as being unpatentable over Lum et al. in view of Anderson (3784908). Lum et al. shows a method of obtaining an electrical signal from a patient including locating a probe, but lacks a point locator providing audible signals. Anderson teaches a method of electrical conductivity in which the dermal area of a patient is located with point locator 35 whereby the point locator 35 indicates the area of highest electrical conductivity. The point locator produces audible signals that can be observed via earphones 45 (column 5, lines 21-26). Therefore it would have been obvious to one having ordinary skill in the art at the time of the invention to modify Lum et al. with a point locator producing audible signals as taught by Anderson for the purpose of providing an audible indication of the dermal area with substantial electrical signal.

5. Claims 3-4, 7, and 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lum et al. in view of Lum et al. (Figure 7B). Lum et al. shows a method of obtaining an electrical signal from a patient including locating a dermal area on a patient and contacting the area with a probe tip 150 and stationary element 152, detector 120, feedback loop 104 that provide electrical signal information, but lacks a biasing element and control of the biasing element providing electrical signals from the feedback loop. In regard to claims 3-4, 7 and 11, Lum et al. (Figure 7B) teaches a stationary hood 180 a biasing element comprising spring 176A and 176B connected to the probe and probe tip 150 for controlling the pressure applied to probe tip 150 from actuating the biasing element (column 5, lines 36-50 and column 3, lines 15-27, 65-67 to column 4, lines 1-3). It would have been obvious to one having ordinary skill in the art at the time of the invention to modify Lum et al. with a biasing element controlled by feedback loop as taught by Lum et al. (Figure 7B) since such modification would provide a means for controlling the amount of pressure applied to probe tip and receiving electrical signal information.

6. Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over Lum et al. in view of Teller et al. (20040133081). Lum et al. shows a method of obtaining an electrical signal from a patient including locating a probe, but lacks a convex probe tip. Teller et al. teaches a method of using an apparatus for detecting bioimpedance comprising a convex probe 805 comprising an abrasive bristly matrix 830 (page 20 paragraph 157 and page 25 paragraph 187 Figure 23). Therefore it would have been obvious for one having ordinary skill in the art at the time of the invention to modify Lum

et al. with a convex probe tip with a bristly matrix as taught by Teller et al. for the purpose of providing a abrasive surface contacting the dermal area of a patient.

7. Claims 8, 10, and 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lum et al. and Lum et al. (Figure 7) as applied to claims 7 and 11 above, and further in view of Anderson. Lum et al. shows a method of locating a dermal area, but lacks a point locator providing audible signals. Anderson teaches a method of measuring electrical conductivity (conductance) in which the dermal area of a patient is located with point locator 35 whereby the point locator 35 indicates the area of highest electrical conductivity. The point locator produces audible signals that can be observed via earphones 45 (column 5, lines 21-26). Therefore it would have been obvious to one having ordinary skill in the art at the time of the invention to modify Lum et al. with a point locator producing audible signals as taught by Anderson for the purpose of providing an audible indication of the dermal area with substantial electrical signal given as a conductance value.

8. Claims 9 and 13-14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lum et al. and Lum et al. (Figure 7) and Anderson, as applied to claims 8 and 12 above, and further in view of Teller et al. Lum et al. shows a method of obtaining an electrical signal from a patient including locating a probe, but lacks a convex probe tip. Teller et al. teaches a method of using an apparatus for detecting bioimpedance comprising a convex probe 805 comprising an abrasive bristly matrix 830 (page 20 paragraph 157 and page 25 paragraph 187 Figure 23). Therefore it would have been obvious for one having ordinary skill in the art at the time of the invention to modify Lum

et al. with a convex probe tip with a bristly matrix as taught by Teller et al. for the purpose of providing a abrasive surface contacting the dermal area of a patient.

Response to Arguments

9. Applicant's arguments filed August 1, 2006 have been fully considered but they are not persuasive. In response to the Applicant's argument that Lum et al. does not teach a method for sensing depth of penetration of an object or substrate, by contacting a dermal area and applying pressure to a probe tip independent of the pressure of the isolation hood against the skin. The Examiner disagrees. Lum et al. shows in the embodiment of figures 1 and 7b applying pressure to a probe tip independent of the pressure on the isolation hood against the skin (see rejection above).

Conclusion

10. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of

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the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kristin D. Rogers whose telephone number is 571.272.7293. The examiner can normally be reached on Monday through Friday 8:00am - 4:30pm EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Max Hindenburg can be reached on 571.272.4726. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


KDR

